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# U.S. v. 718 W. Wilson Ave., Glendale, Cal., 91203

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**Matt Jennings**

## **I. INTRODUCTION**

In *United States v. 718 West Wilson Avenue, Glendale, California, 91203*,<sup>91</sup> the District Court for the Central District of California granted partial summary judgment on the United States' motion to recover from a landowner, *in rem*, for all CERCLA<sup>92</sup> related environmental costs where the landowner was previously found liable. The United States previously prevailed on a motion for summary judgment to establish liability against a property owner and his property, *in rem*, for chemical contamination of soil and groundwater.<sup>93</sup> Defendants were the property's owner, Hovsep Boghossian, and the property itself, 718 West Wilson Avenue, Glendale, California.<sup>94</sup> Boghossian bought the chemically contaminated property in 2008 despite an Environmental Protection Agency (EPA) lien on the property.<sup>95</sup> The court found Boghossian and his property liable on November 30, 2010, and granted summary judgment in the government's favor.<sup>96</sup> Following the determination of liability, the United States moved for partial summary judgment to determine the amount recoverable under CERCLA and the deficiency of Boghossian's response to the CERCLA Information Request.<sup>97</sup>

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

The property, located in the San Fernando Valley, was used by the Drilube Company for aerospace related activities.<sup>98</sup> Drilube contaminated the soil and groundwater with hazardous

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<sup>91</sup> *U.S. v. 718 W. Wilson Ave., Glendale, Cal., 91203*, \_\_\_ F.Supp.2d \_\_\_, 2011 WL 1496325 (C.D. Cal. Apr. 11, 2011).

<sup>92</sup> Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (2006).

<sup>93</sup> *718 W. Wilson Ave.*, 2011 WL 1496325 at \*1.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at \*2.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at \*1.

chemicals to an extent that the property was designated a Superfund Site.<sup>99</sup> Remy Mazmanian purchased the property in 2004.<sup>100</sup> The EPA began cleanup activities on the property in March of 2007.<sup>101</sup> Using CERCLA, the EPA placed a lien on the property while it was still owned by Mazmanian.<sup>102</sup> Cleanup activities concluded in April 2010.<sup>103</sup> Despite being aware of the contamination and lien, Hovsep Boghossian purchased the property after the EPA started response activities in 2008.<sup>104</sup> The EPA attempted to contact Boghossian in November 2008 with a CERCLA section 104(e) Information Request.<sup>105</sup> Boghossian was required to respond within 45 days.<sup>106</sup> When he was late in his response, the EPA sent a follow-up letter warning him of penalties if he failed to comply with the information request.<sup>107</sup> Boghossian finally responded 94 days after the information request was due.<sup>108</sup> But Boghossian's response failed to provide documentation or evidence in defense of EPA's claims, and he never requested to access or inspect EPA's documentation on its response costs.<sup>109</sup>

The United States filed suit against Boghossian and the property on September 3, 2009.<sup>110</sup> The United States moved to separate the case into three phases: (1) to establish liability, (2) to determine costs to be paid by parties, and (3) to resolve other issues raised by U.S. Bank, an intervenor.<sup>111</sup> The motion was granted and on November 30, 2010, the court partially granted

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<sup>99</sup> 718 W. Wilson Ave., 2011 WL 1496325 at \*1.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> 718 W. Wilson Ave., 2011 WL 1496325 at \*5 (Section 104(e) of CERCLA authorizes the EPA to issue information requests to any person who may have information about a contaminated site, not just potentially responsible parties).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at \*1.

<sup>111</sup> 718 W. Wilson Ave., 2011 WL 1496325 at \*1.

the United States' motion for partial summary judgment.<sup>112</sup> The court held that the property was liable *in rem* for cleanup costs associated with the EPA's National Contingency Plan (NCP).<sup>113</sup> The court also found Boghossian individually liable as the property owner and operator of the site.<sup>114</sup> The court having established liability, the United States sought to recover cleanup costs on a motion for partial summary judgment.<sup>115</sup> The United States claimed \$1,392,734 in cleanup costs as of September 30, 2010.<sup>116</sup>

### **III. ANALYSIS**

#### **A. Recoverable Costs under CERCLA**

The United States submitted to the court an EPA Cost Summary along with affidavits detailing the costs accrued from cleanup activities.<sup>117</sup> The United States asked the court for all costs associated with its response actions pursuant to the NCP and CERCLA.<sup>118</sup> The court determined that all costs should be construed broadly to include any direct costs, indirect costs, litigation costs, and interest on the recoverable costs incurred.<sup>119</sup> Specifically, the court held that the United States could recover payroll and travel expenses, EPA contractor costs, indirect and oversight costs, costs incurred by the Department of Justice in bringing suit, and interest on unpaid amounts.<sup>120</sup> Boghossian failed to dispute the United States' right to recover the costs in his brief opposing summary judgment and the court determined there was no dispute as a matter of law in regards to the costs recoverable to the United States.<sup>121</sup> Thus, the court awarded the United States the full \$1,392,734 claimed.<sup>122</sup>

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<sup>112</sup> *Id.* at \*2

<sup>113</sup> *Id.* at \*2 (*See* 42 U.S.C. § 9605 and 40 C.F.R. pt. 300, *et seq* (2010) for a description of the NCP).

<sup>114</sup> *Id.* at \*2.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> 718 W. Wilson Ave., 2011 WL 1496325 at \*4.

<sup>118</sup> *Id.* at \*3 (citing 42 U.S.C. § 9607(a)(4)).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at \*4.

<sup>122</sup> *Id.*

## **B. Civil Penalties Assessed for Failure to Respond to EPA Information Requests**

The EPA notified Boghossian about the CERCLA liability on his land in November of 2008, and Boghossian responded 94 days after the response was due.<sup>123</sup> Boghossian's response did not provide any evidence or documentation to refute the CERCLA liability.<sup>124</sup> Boghossian declined opportunities to review the EPA documentation regarding its response activities on his property.<sup>125</sup> Under federal regulations, failure to respond to an EPA information request can result in serious monetary penalties.<sup>126</sup> The court used a test to analyze penalties under CERCLA which included: (1) the good or bad faith of defendant, (2) injury to the public, (3) defendants' ability to pay, (4) desire to eliminate the benefits derived by the violation, and (5) the necessity of vindicating the enforcing party.<sup>127</sup> Boghossian completely failed to respond to the request for a penalty in his brief.<sup>128</sup> As a result, the court fined Boghossian \$37,500, which is an amount equal to only one day of violation despite being 94 days late in a response. The court believed this fine was sufficient to send a message about taking EPA information requests seriously.<sup>129</sup>

## **IV. CONCLUSION**

This case demonstrates the seriousness that courts may take in finding responsible parties for environmental degradation and cleanup costs, which would otherwise be borne by taxpayers. In this case, the property owner did not actually contaminate the property but he purchased the property after cleanup activities had begun. Regardless, the court held the property owner accountable rather than allowing the government to go uncompensated for its cleanup expenses.

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<sup>123</sup> 718 W. Wilson Ave., 2011 WL 1496325 at \*\*1, 5.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at \*6 (citing 42 U.S.C. § 9604(e)(5)(B), 73 Fed. Reg. 75340, 75345 (Dec. 11, 2008)).

<sup>127</sup> *Id.* (citing *U.S. v. Gurley*, 384 F.3d 316, 325 (6th Cir. 2004)).

<sup>128</sup> *Id.*

<sup>129</sup> 718 W. Wilson Ave., 2011 WL 1496325 at \*6.